

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF THE DEPARTMENT OF REVENUE**

In the Matter of	)	
	)	
V K. X	)	OAH No. 15-0553-CSS
<hr style="width:40%; margin-left:0"/>	)	Agency No. 001161579

**DECISION AND ORDER**

**I. Introduction**

The Child Support Services Division (CSSD) entered a Modified Administrative Child Support and Medical Support Order increasing the monthly support obligation of V K. X for his minor son, V, from \$50 per month to \$440 per month. Mr. X appeals. Based on the record as a whole and after careful consideration, Mr. X’s child support for V is modified to \$409.00 per month, effective March 1, 2015.

**II. Facts**

V K. X (“X”) and L Y (“Y”) are the parents of eight-year old V C. X (“V”). Ms. Y has custody of V, who has special needs.<sup>1</sup> Mr. X lives in Anchorage with his wife and their newborn child.<sup>2</sup>

Since January 1, 2012, Mr. X has been subject to a CSSD order setting his monthly child support obligation for V at the statutory minimum of \$50 per month.<sup>3</sup> In February 2015, Ms. Y made a verbal request for modification.<sup>4</sup> On February 11, 2015, CSSD sent Ms. Y and Mr. X a “Notice of Petition for Modification of Administrative Support Order” via first class mail.<sup>5</sup> The February 11 Notice directed both parties to submit income information.<sup>6</sup> However, neither parent submitted the required income information to CSSD.

CSSD obtained wage information for Mr. X from the Alaska Department of Labor and Workforce Development.<sup>7</sup> On March 28, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order, increasing X’s monthly

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<sup>1</sup> Testimony of Ms. Y.  
<sup>2</sup> Testimony of Ms. Y.  
<sup>3</sup> Ex. 1.  
<sup>4</sup> Testimony of Ms. Y.  
<sup>5</sup> Ex. 2.  
<sup>6</sup> Ex. 2, pp. 1-2  
<sup>7</sup> Ex. 5.

obligation from \$50 to \$440 per month, effective March 1, 2015.<sup>8</sup> The order explained that the modification was based on an assumed 2015 annual income of \$30,160.00.<sup>9</sup> The Division based this amount on Mr. X's hourly wage – \$14.50 – multiplied by 2080 hours.<sup>10</sup>

The modification also assumed receipt of a Permanent Fund Dividend, a factor which increased the support due.<sup>11</sup> The modification gave credit for an additional child support obligation for another child, a factor which decreased the support due.<sup>12</sup> The Division concluded that Mr. X had an annual total gross income of \$32,044, with \$468.22 in monthly allowable deductions, including \$25.13 for “child support or alimony in prior relationship,” ultimately leaving an adjusted annual income of \$26,425.36.<sup>13</sup> Pursuant to Rule 90.3(a)(2)(A), the Division then concluded that Mr. X had \$5,285.07 in “annual income available for child support.”<sup>14</sup> This amount was then used to determine a modified monthly child support payment of \$440.

Mr. X has appealed the modification decision, setting forth the following four bases for his appeal:

- (1) I pay child support on more than one child.
- (2) I do not collect a PFD.
- (3) I am not guaranteed a full 40 hours per week for work.
- (4) I will be unable to pay my bills, including rent, at this amount.<sup>15</sup>

A hearing on Mr. X's appeal was originally scheduled for June 1, 2015. Both parents were sent notice of the hearing on May 15, 2015 via certified mail to their address on record with CSSD. On May 29, 2015, a Notice rescheduling the hearing to June 9 was sent to both parents by first class mail.

A hearing on Mr. X's appeal was held on June 9, 2015 at the Office of Administrative Hearings (OAH). Ms. Y appeared by telephone. Joseph West, Child Support Specialist, represented CSSD, and also appeared by telephone. Mr. X was unable to be reached

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<sup>8</sup> Ex. 3.

<sup>9</sup> Ex. 3, pp. 5-6.

<sup>10</sup> Ex. 3, pp. 5-6.

<sup>11</sup> Ex. 3, pp. 5-6.

<sup>12</sup> Ex. 3, pp. 5-6.

<sup>13</sup> Ex. 3, p. 6.

<sup>14</sup> Ex. 3, p. 6.

<sup>15</sup> Exhibit 4, p. 1. Mr. X's appeal was dated April 27, 2015, but not received by CSSD until May 5, 2015 [Ex. 4, pp. 1-2]. Mr. X attached a note to his appeal indicating that he “had not received [the modification decision] in enough time to respond within 30 days from March 28<sup>th</sup>,” but that he had “responded as soon as [he] could” [Ex. 4, p. 2]. CSSD is not contesting the timeliness of his appeal.

at any of the three telephone numbers available to CSSD or the OAH. Because he had been properly notified of the hearing, the hearing was conducted in his absence.

Following the hearing, the OAH received in the mail the returned certified mail hearing notice which had been sent to Mr. X on May 15. The envelope had been marked by the post office with the following notations: “return to sender/unclaimed/unable to forward.” The envelope was addressed to “No Name.” This is the same address Mr. X listed on his April 27, 2015 Appeal of Action by CSSD. However, the OAH never received a returned copy of the May 29 Notice informing him that the June 1 hearing was rescheduled to June 9. Accordingly, and pursuant to 15 AAC 05.010(c), service on Mr. X was proper and he received appropriate notice of the hearing. Either Mr. X failed to provide this office and CSSD with a new address, in violation of CSSD regulations, or Mr. X failed or refused to pick up his certified mail, which does not constitute good cause for thus being (intentionally) unaware of the hearing.

As noted above, the hearing was held in Mr. X’s absence. The hearing was recorded, and afterwards the record was initially held open for ten days to allow Mr. X an opportunity to contact the OAH and show cause for his failure to attend, and also to allow CSSD to recalculate certain aspects of Mr. X’s support obligation. Mr. X did not contact the OAH or submit any material for consideration.

In the meantime, on June 9, 2015, CSSD submitted Exhibit 8, a revised child support calculation reducing Mr. X’s monthly obligation to \$409 per month.<sup>16</sup> The undersigned then issued an Interim Order directing CSSD to provide an affidavit addressing the basis for the information used in the revised calculation. The Interim Order held the record open for an additional ten days following CSSD’s submission of that affidavit, to again allow Mr. X an opportunity to respond. Mr. X again did not contact the OAH or submit any material for consideration.

#### **IV. Discussion**

Civil Rule 90.3(a)(1) provides that an obligor’s child support amount is to be calculated based on his or her “total income from all sources,” minus mandatory deductions such as taxes and Social Security. Civil Rule 90.3(a)(1)(C) also provides that a parent is entitled to a deduction from income for “child support . . . payments arising from prior

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<sup>16</sup> Ex. 8. The reduction is based on exclusion of the PFD, and also an increase in credits for other court-ordered child support obligations.

relationships which are required by other court or administrative proceedings and actually paid[.]” As the party challenging the modification, Mr. X has the burden of proof to show by a preponderance of the evidence that the modification order is incorrect.<sup>17</sup>

*A. Total Income from All Sources*

1. Assumed Annual Wage Income

CSSD’s modification decision was based in large part on its determination that Mr. X’s expected annual wages – established in the prior modification order at zero – are \$30,160.00.<sup>18</sup> Included in CSSD’s exhibits on appeal is a summary of the wage information obtained from the Department of Labor and Workforce Development.<sup>19</sup> According to CSSD’s summary of these records, Mr. X’s annual income was \$7,769.08 in 2012, \$16,932.76 in 2013, and \$12,963.37 in 2014.<sup>20</sup> In the first quarter of 2015, however, his income was \$7,957.74.<sup>21</sup>

In his April 27, 2015 “Appeal of Action,” Mr. X contended that CSSD should not calculate his expected annual wages based on a full 40 hours per week, writing “I am not guaranteed a full 40 hrs per week for work.”<sup>22</sup> However, CSSD provided evidence that Mr. X’s employer reported to CSSD that Mr. X works an average of 40 hours per week.<sup>23</sup> Mr. X did not appear at the hearing to contest this evidence, and did not submit any information or argument in response to the Division’s post-hearing submissions. Having failed to produce any evidence or present any argument, Mr. X did not meet his burden of proof on this issue.

2. The Permanent Fund Dividend

CSSD’s modification decision includes a determination that Mr. X’s expected total gross income includes \$1,884 from the Permanent Fund Dividend (PFD).<sup>24</sup> The February 2012 order did not assume receipt of the PFD.<sup>25</sup> Mr. X has a felony conviction that renders him currently ineligible for the PFD. Accordingly, it was error to include income from the PFD in the calculation of Mr. X’s expected income. Although Mr. X did not appear at the

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<sup>17</sup> 15 AAC 05.030(h).

<sup>18</sup> See Ex. 5, p. 9.

<sup>19</sup> Ex. 5.

<sup>20</sup> Ex. 5, p. 1.

<sup>21</sup> Ex. 5, p. 1.

<sup>22</sup> Ex. 4, p. 1.

<sup>23</sup> Affidavit of Joseph West, submitted June 22, 2015.

<sup>24</sup> Ex. 5, p. 9.

<sup>25</sup> Ex. 1, p. 6.

hearing, CSSD appropriately addressed this issue in the revised support calculation it submitted following the hearing.

*B. Deductions from Income: Other Child Support Obligations*

Mr. X contends that the modification order fails to consider support he pays for other children.<sup>26</sup> The Division’s revised calculation corrects this error.<sup>27</sup>

*C. Hardship*

Lastly, Mr. X asserts in his written appeal request that the modification order presents an undue hardship. Specifically, he claims he “will be unable to pay [his] bills, including rent, at this amount.”<sup>28</sup> As noted, however, Mr. X did not appear at the hearing to provide testimony about the nature of his bills or other expenses. Ms. Y did appear, and testified that V has special medical needs that require frequent travel from No Name to Anchorage for medical appointments, as well as periodic travel out of state for medical treatment. Having failed to appear at the hearing or provide evidence on this issue, Mr. X did not meet his burden of establishing that the balance of hardships favors relieving him of his full support obligations under Civil Rule 90.3.

**V. Conclusion**

Mr. X did not appear at the hearing or submit information thereafter when given the opportunity to do so. The Division’s revised calculations submitted after the hearing fully address both known errors – the PFD and prior child support issues – in the March 2015 Modified Administrative Child Support and Medical Support Order. Mr. X did not meet his burden of proof as to any of his further complaints about the March 2015 Order, and his request for a hardship variance is denied.

**VI. Child Support Order**

1. V K. X is liable for modified child support in the amount of \$409 per month for V C. X, effective March 1, 2015 and ongoing;

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<sup>26</sup> Ex. 4, p. 1.  
<sup>27</sup> See Ex. 8.  
<sup>28</sup> Ex. 4, p. 1.

2. All other terms of the Modified Administrative Child Support and Medical Support Order dated March 28, 2015 remain in full force and effect.

Dated: July 6, 2015

Signed  
\_\_\_\_\_  
Cheryl Mandala  
Administrative Law Judge

### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days after the date of this decision.

DATED this 21<sup>st</sup> day of July, 2015.

By: Signed  
\_\_\_\_\_  
Signature  
Cheryl Mandala  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

[This document has been modified to conform to the technical standards for publication.]